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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8717 OF 2007

Mumbai Labour Union ...Petitioner
V/s.
M/s. Automotive Manufactures
Pvt. Ltd. & ors. ...Respondent

Smt. Neeta Karnik for the Petitioner

Mr. A.V.Bukhan with Mr.B.V.Bukhan, Advocate for
Respondent

CORAM : B.H.MARLAPALLE,J.
DATED : 3rd December, 2007

P.C.

Heard Mrs. Neeta Karnik, the Learned Counsel for the Petitioner who had approached the Industrial Court at Thane in Comp(ULP) No. 239/2007 challenging the transfer order passed on promotion and issued on 24-9-2007 and he has been shifted from the Navi Mumbai Branch to the Branch at Chandrapur. It is contended that the said order amounts to unfair labour practice under items 3, 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. In the said complaint the application for interim-relief marked as Exh.U-2 was filed under Section 30(2) of the Act and by the impugned order dated 18-10-2007 Learned Member of the Industrial Court at Thane was pleased to reject the said application.

2. There is no dispute that the respondent company has its branch at Chandrapur, that the Complainant was

appointed for the first time as 'Mechanic B' as per the order dated 8-5-1991 and he was subsequently promoted to the post of 'Mechanic A'. The appointment order clearly states that the Complainant is liable to be transferred from one branch, department, section or office to its any branch, department, section or office of the company. Thus, prima-facie the employer has the right to transfer the Complainant in any of its branches.

3. It is also noticed that the Complainant is not an office bearer of the union and the representation made to the management on the issue of alleged deductions from the salary was raised by all the mechanics.

4. It was contended by Mrs. Neeta Karnik that the Complainant had been victimised by the management and this is done to weaken the union and the order suffers from malafides. These are the points which will have to be gone into by the Industrial Court, while deciding the main complaint. While considering the legality of the order passed on the interim-relief application under Section 30(2) of the MRTU & PULP Act, the Industrial Court has to apply its mind to find out whether the Complainant had shown a prima-facie case of unfair labour practice as alleged and here is a case where the Complainant has been promoted to the supervisory post and transferred. It was contended by Mrs. Karnik that

the employee has a choice either to accept the promotion or not to accept. The Industrial Court was required to examine whether the action of the management by promoting and transferring the Complainant made out a prima-facie case of unfair labour practice and the Industrial Court has answered the same against the employee. It is well settled that the transfer is a matter of incidence of service and when the employer has such a right in the appointment order or in the Service Rules, the issues of victimisation, malafides and/or motives etc. are matters of mixed questions of law and facts which will have to be decided on the basis of evidence by the parties during the trial of the complaint. I do not find any reason to hold that the view taken by the Industrial Court in rejecting the application for interim-relief, is either perverse or grossly erroneous so as to call for interference under Article 227 of the Constituion.

5. Hence the petition is rejected. At the request of Mrs. Karnik, the Petitioner is given one week's time to report for duty.

[B.H.MARLAPALLE,J.]